

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Docket Number (Optional)

132076UL
(12553-1020)

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 or facsimile transmitted to the U.S. Patent and Trademark Office on the date shown below.

on _____

Signature_____

Typed or printed name _____

Application Number

10/722,914

Filed

11/26/2003

First Named Inventor
Israel Raz

Art Unit

2181

Examiner

Martinez, David E

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.

This request is being filed with a notice of appeal.

The review is requested for the reason(s) stated on the attached sheet(s).

Note: No more than five (5) pages may be provided.

I am the

 applicant/inventor. assignee of record of the entire interest.See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed.
(Form PTO/SB/96) attorney or agent of record.Registration number 53,933

Signature

Charles H. Livingston

Typed or printed name

314-584-4089

attorney or agent acting under 37 CFR 1.34.

Telephone number

Registration number if acting under 37 CFR 1.34 _____

October 16, 2007

Date

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required.

Submit multiple forms if more than one signature is required, see below.

*Total of _____ forms are submitted.

This collection of information is required by 35 U.S.C. 132. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11, 1.14 and 41.6. This collection is estimated to take 12 minutes to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

REMARKS

In a Final Office Action dated July 16, 2007, the Examiner rejected claims 1-20, which are all of the pending claims in the present application. Applicants filed a Request for Reconsideration on August 31, 2007. An Advisory Action was mailed September 13, 2007 in which the Examiner indicated that the arguments submitted in the Request for Reconsideration were not persuasive. Applicants respectfully submit that all presently pending claims are allowable over the references cited by the Examiner.

Each and every outstanding rejection relies on U.S. Patent 6,023,343 (Hoang) in view of U.S. Patent Application Publication No. 2004/0084971 (Shukla). Specifically, claims 1, 2, 5-10 and 13-18 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoang in view of Shukla. Claims 3, 11, and 19 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoang in view of Shukla, and further in view of U.S. Patent Application Publication No. 2003/0053109 (Lester). Claims 4, 12, and 20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Hoang in view of Shukla, and further in view of U.S. Patent Application Publication No. 2002/0063880 (Raney). Applicant requests that the outstanding rejections be reversed.

Independent claim 1 recites a method for managing outputs to peripheral devices in medical systems devices, wherein the method includes, among other things, "storing the data object in a first memory if the peripheral device is not accessible and not available to accept the data object...."

As admitted on page 3 of the Final Office Action dated July 16, 2007, Hoang does not describe or suggest storing a data object in a first memory if a peripheral device is not accessible. The Examiner instead relies on Shukla for teaching storing a data object in a first memory if a peripheral device is not accessible, as recited in claim 1. Applicant disagrees that Shukla describes storing a data object in a first memory if a peripheral device is not accessible.

Shukla describes a method and apparatus for handling power supply failures to a peripheral device in a data processing system. The method includes monitoring a power supply to determine whether the electrical power is going from "on" to "off." If the electrical power is going from "on" to "off," the method includes examining a volatile task queue for the peripheral device to find at least one task, and calculating the amount of electrical energy required for the task. If insufficient electrical energy remains available to the peripheral device to complete the task, the method includes storing data describing the task in a non-volatile task queue in a non-volatile memory. The volatile task queue resides within the peripheral device, while the non-volatile memory may reside within the peripheral device or may reside outside the peripheral device.

Applicant asserts that storing data describing a task in a non-volatile memory when insufficient electrical energy remains available to the peripheral device to complete the task, as described by Shukla, is not the same as storing a data object in a first memory if a peripheral device is not accessible, as recited in claim 1. Claim 1 recites an action that is taken upon the occurrence of a condition. Specifically, claim 1 recites taking the action of storing a data object in a first memory upon the occurrence of the condition that the peripheral device is not accessible. Shukla also describes an action that is taken upon the occurrence of a condition. Specifically, Shukla describes taking the action of storing data describing a task in a non-volatile memory upon the occurrence of the condition that insufficient electrical energy remains available to the peripheral device to complete the task. The conditions upon which the actions of claim 1 and Shukla are taken are different. Namely, Shukla describes taking the action when insufficient energy remains while claim 1 recites taking the action when a peripheral device is not accessible. Whether or not insufficient energy remains to complete a task is not the same as being inaccessible because the peripheral device must be accessed in order to make the determination of whether there is sufficient or insufficient energy. Even if insufficient energy remains to perform all of the tasks on the volatile task queue, the peripheral device is still accessible.

On page 2 of the Advisory Action dated September 13, 2007, the Examiner asserts that: “If the peripheral is accessible and available to accept data objects as taught by Hoang, then only a second memory is required. If the conditional statement doesn’t happen then the last limitation is not performed and therefore not required, thus every limitation being anticipated by the Hoang reference.” Regardless of whether the recitation of “storing a data object in a first memory” is required when the peripheral device is accessible, Applicant reiterates that neither Hoang nor Shukla, considered alone or in combination, describe or suggest storing the data object in the first memory if the peripheral device is not accessible, as recited claim 1.

Moreover, Applicant also asserts similar arguments to those made in the Request for Reconsideration filed on April 25, 2007. Specifically, Applicant asserts that the system of Shukla is incapable of storing the data describing the task if the peripheral device is not accessible. Shukla describes examining a volatile task queue that resides within the peripheral device to find at least one task, and calculating the amount of electrical energy required for the task. If insufficient electrical energy remains available to the peripheral device to complete the task, data describing the task is stored in a non-volatile memory. However, Shukla cannot store data describing the task if the peripheral device is not accessible because Shukla cannot find the task to begin with unless the peripheral device is accessible. Notably, Shukla does not describe or suggest that the volatile task queue could reside outside the peripheral device.

On page 7 of the outstanding Final Office Action, the Examiner asserts that step element 606 of Figure 6 of Shukla “determines if a peripheral is accessible or not accessible (i.e. if the peripheral is usable) by detecting if it has enough energy to perform a task.” However, detecting whether a peripheral device has enough energy to perform a task cannot be the determining factor as to whether the peripheral device is accessible because, as described above, the system of Shukla must access a volatile task queue that resides on the peripheral device to find the task and determine if the peripheral device has enough energy to perform the task. On page 2 of the Advisory Action dated September 13, 2007, the Examiner argues that “[e]ven though the volatile memory may lie within the boundaries of the peripheral device, the volatile memory by itself may be accessible when the peripheral is not assessable since the peripheral may not be able to perform its function at that time.” Applicant disagrees. How can the volatile task queue be accessible if it resides within the peripheral device and the peripheral device is not accessible? Applicant asserts that the volatile task queue cannot be accessible when the peripheral device is not accessible.

On page 2 of the Advisory Action dated September 13, 2007, the Examiner argues that “[p]lease note that fig 6 calls for either all or none of the tasks to be performed and there is no possibility for some of the tasks to be performed thus the peripheral device being inaccessible when there is a lack of sufficient energy.” However, as described above, even if there is insufficient energy remaining to complete any task, the peripheral device must be accessed in order to make the determination of whether there is sufficient or insufficient energy.

For at least the reasons set forth above, Applicant submits that storing data describing a task in a non-volatile memory when insufficient electrical energy remains available to the peripheral device to complete the task, as described by Shukla, is not the same as storing a data object in a first memory if a peripheral device is not accessible, as recited in claim 1. Because Hoang and Shukla individually fail to describe one or more elements of independent claim 1, a combination of Hoang and Shukla cannot describe such element(s). For at least the reasons set forth above, independent claim 1 is submitted to be patentable over Hoang in view of Shukla.

Neither Lester nor Raney, considered alone or in combination, make up for the deficiencies of the combination of Hoang and Shukla with respect to claim 1.

Independent claim 17 is submitted to be patentable over the cited art for at least the reasons set forth above with respect to independent claim 1.

Independent claim 9 recites an imaging system including, among other things, a processor configured to, among other things, “instruct to store the data object in a first memory if the peripheral device is not in an active state....”

As admitted on page 3 of the Final Office Action dated July 16, 2007, Hoang “is silent as to performing the storing of the data in a first memory under the condition of...‘if the peripheral device is not in an active state’”. The Examiner instead relies on Shukla for teaching a processor configured to instruct to store a data object in a first memory if a peripheral device is not in an active state, as recited in claim 9. Applicants disagree that Shukla describes instructing to store a data object in a first memory if a peripheral device is not in an active state.

Applicant asserts that storing data describing a task in a non-volatile memory when insufficient electrical energy remains available to the peripheral device to complete the task, as described by Shukla, is not the same as storing a data object in a first memory if a peripheral device is not in an active state, as recited in claim 9. Claim 9 recites taking the action of storing a data object in a first memory upon the occurrence of the condition that the peripheral device is not in an active state. Shukla describes taking the action of storing data describing a task in a non-volatile memory upon the occurrence of the condition that insufficient electrical energy remains available to the peripheral device to complete the task. The conditions upon which the actions of claim 9 and Shukla are taken are different. Namely, Shukla describes taking the action when insufficient energy remains while claim 9 recites taking the action when a peripheral device is not in an active state. Whether or not insufficient energy remains to complete a task is not the same as being inactive because the peripheral device could be either active or inactive when there is insufficient energy remaining to complete a task. For example, as shown in Figure 7 and despite the Examiner’s arguments in the Advisory Action with respect to Figure 6 of Shukla and with respect to independent claim 9, there may be enough energy to perform some tasks on the peripheral device and such tasks may be completed while other tasks for which insufficient energy remains are stored in the non-volatile memory. Accordingly, in the case where some tasks are performed and others are stored, the peripheral device is active even though insufficient energy remains for some other tasks. Therefore, whether or not insufficient energy remains to complete a task is not the same as being inactive.

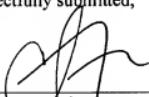
For at least the reasons set forth above, Applicant submits that storing data describing a task in a non-volatile memory when insufficient electrical energy remains available to the peripheral device to complete the task, as described by Shukla, is not the same as storing a data object in a first memory if a peripheral device is not in an active state, as recited in claim 9. Because Hoang and Shukla individually fail to describe one or more elements of independent claim 9, a combination of Hoang and Shukla cannot describe such element(s). For at least the reasons set forth above, independent claim 9 is submitted to be patentable over Hoang in view of Shukla.

Neither Lester nor Raney, considered alone or in combination, make up for the deficiencies of the combination of Hoang and Shukla with respect to claim 9.

The dependent claims are likewise allowable based at least on the dependency of the dependent claims from the independent claims.

In view of the foregoing, Applicants submit that the Examiner has failed to support the rejection of the pending claims. Thus, it is respectfully submitted that the pending claims define allowable subject matter over the cited art and reversal of the outstanding Office Action is respectfully requested.

Respectfully submitted,



Charles H. Livingston
Registration No. 53,933
THE SMALL PATENT LAW GROUP LLP
Suite 1611
611 Olive Street
St. Louis, MO 63101
314-584-4080